

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KARA JO AIKENS,

Plaintiff,

v

SYNCHRONY FINANCIAL,

Defendant.

Case No. 15-cv-10058

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On January 8, 2014, Plaintiff Kara Jo Aikens filed her complaint against Defendant Synchrony Financial, alleging that Synchrony Financial violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq* ("TCPA § 227"). Specifically, Aikens alleges that Synchrony Financial used an automatic telephone dialing system ("ATDS") to place over 100 calls to Aikens' cell phone.

On March 17, 2015, Synchrony Bank filed a motion to dismiss. On July 31, 2015, Magistrate Judge Patricia T. Morris issued a report recommending that Synchrony Bank's motion to dismiss be granted and that Aikens complaint be dismissed without prejudice.¹ Judge Morris found that Aikens had not provided sufficient information about the time and content of the phone calls to give rise to a reasonable belief that an ATDS had been used to place the calls. Accordingly, Judge Morris concluded that Aikens had not met the pleading requirements of

¹ The report will be rejected to the extent that it contains a minor internal inconsistency. Defendant's motion requests dismissal with prejudice (Def's. Mot. Dismiss 8, EF No. 8.). The Magistrate Judge's Report recommends granting the motion to dismiss in full (i.e. with prejudice) while simultaneously recommending dismissal without prejudice (R. & R. 10, ECF No. 15.). Therefore the report will be rejected to the extent that it recommends granting Defendant's motion in full.

Federal Rule of Civil Procedure 8(a), and thus had not stated a plausible claim for relief under TCPA § 227.

Although Magistrate Judge Morris's report explicitly stated that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 15) is **ADOPTED IN PART AND REJECTED IN PART**.

It is further **ORDERED** that Defendant's motion to dismiss (ECF No. 8) is **GRANTED IN PART**.

It is further **ORDERED** that Plaintiff's complaint is dismissed **WITHOUT PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 31, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 31, 2015.

s/Karri Sandusky
Karri Sandusky, Acting Case Manager